

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD POHLY,
Plaintiff,

v.

INTUITIVE SURGICAL, INC.,
Defendant.

Case No. [15-cv-04113-MEJ](#)

**ORDER RE: ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

Re: Dkt. No. 120

On June 6, 2017, Defendant Intuitive Surgical, Inc. (“ISI”) filed an administrative motion to file under seal certain exhibits to the Mullenix Declaration submitted in support of Plaintiff Richard Pohly’s Opposition to ISI’s Motion for Summary Judgment. Mot., Dkt. No. 120. Plaintiff did not respond to the Motion to Seal. Having considered ISI’s arguments, the relevant legal authority, and the record in this case, the Court issues the following order.

LEGAL STANDARD

There is a “strong presumption in favor of access” by the public to judicial records and documents accompanying dispositive motions. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). To overcome this presumption, a “party must articulate compelling reasons supported by specific fact[s].” *Id.* at 1178 (internal quotation and citation omitted); *see also Apple, Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1223 (Fed. Cir. 2013) (finding sealing appropriate where companies “filed declarations from employees” that “explained the measures the two companies take to keep their product-specific financial information confidential” and “the harm they would suffer if their product-specific financial information were made public”). Indeed, such showing is required even where “the dispositive motion, or its attachments, were

previously filed under seal or protective order.” *Kamakana*, 447 F.3d at 1179.

DISCUSSION

ISI seeks to seal portions of Exhibits 92, 104, 107, 115, 119, 128, 129, and 192 of the Mullenix Declaration and Exhibits 12 and 21 in their entireties. Mot. at 1. In support of its Motion, ISI submits the Declaration of David Stoffel, Vice President of Marketing and New Business Development at ISI. Stoffel Decl. ¶ 1, Dkt. No. 120-1. The Court rules as follows:

Exhibit No.	Ruling	Reasoning
12	GRANTED.	The entirety of Exhibit 12 contains information about ISI’s Monopolar Curved Scissors (“MCS”) which ISI’s competitors could use to develop or improve their own products. Stoffel Decl. ¶ 6.
21	GRANTED.	The entirety of Exhibit 21 contains propriety confidential information which competitors could use to develop or improve their own products. Stoffel Decl. ¶ 7.
92	GRANTED as to the highlighted portions.	The proposed redactions of Exhibit 92 concern trade secret and confidential information about ISI’s root cause investigation and about the manufacturing processes of ISI’s component supplier. Stoffel Decl. ¶ 8. A competitor could use this information to improve its own products. <i>Id.</i>
104	GRANTED as to the highlighted portions.	The proposed redactions contain details of ISI’s research and development, which a competitor could use to develop or improve its own products. Stoffel Decl. ¶ 9
107	GRANTED as to the highlighted portions.	The proposed redactions contain proprietary information about ISI’s confidential test protocols and results. Stoffel Decl. ¶ 10.
115	GRANTED as to the	The proposed redactions

	highlighted portions.	contain proprietary, confidential trade secrets about the MCS. Stoffel Decl. ¶ 11.
119	GRANTED as to the highlighted portions.	The proposed redactions contain competitively sensitive information. Stoffel Decl. ¶ 12.
128	GRANTED as to the highlighted portions.	The proposed redactions concern proprietary trade secrets and confidential information about certain MCS instrument parts, which a competitor could use to improve its own products. Stoffel Decl. ¶ 13.
129	GRANTED as to the highlighted portions.	The proposed redactions contain competitively sensitive information about ISI's investigation into returned MCS instrument. Stoffel Decl. ¶ 14.
192	GRANTED as to the highlighted portions.	The proposed redactions contain proprietary information about ISI's confidential test protocols and results. Stoffel Decl. ¶ 10.

In addition, the Court finds the proposed redactions are narrowly tailored in accordance with Civil Local Rule 79-5(b).

As the aforementioned exhibits are attached to Plaintiff's Opposition and as the Opposition has yet to be filed in the public docket, Plaintiff shall file them with his Opposition in accordance with this Order no later than June 9, 2017.

IT IS SO ORDERED.

Dated: June 13, 2017



MARIA-ELENA JAMES
United States Magistrate Judge